

## Senate Bill No. 430

### CHAPTER 303

An act to amend Sections 10089.5, 10089.9, 10089.13, 10089.16, 10089.23, 10089.30, and 10089.33 of, and to add Section 10089.31 to, the Insurance Code, relating to insurance.

[Approved by Governor October 5, 2007. Filed with  
Secretary of State October 5, 2007.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 430, Machado. Insurance: California Earthquake Authority.

Existing law authorizes the California Earthquake Authority, administered under the authority of the commissioner to transact basic residential earthquake insurance and defines "available capital," for the purpose of issuing policies.

This bill would revise the definition of "available capital," as specified.

Existing law permits the authority to require participating insurers to make certain additional capital assessments under specified conditions. These assessments are required to be reduced to zero 12 years after the commencement of authority operations. That 12-year period ends on December 1, 2008.

This bill would specify that these assessments shall be reduced to zero on December 1, 2008, with respect to earthquake events that commence on or after that date. This bill would also provide that, if claims and claim expenses paid by the authority due to earthquake events that commence on or after December 1, 2008, exhaust existing capital and the maximum amount of all specified assessments, the board shall have the power to further assess participating insurers, subject to specified maximum limits according to a specified formula.

This bill would make various other related changes to implement the assessment provisions that apply to earthquake events that commence on or after December 1, 2008. The provisions of the bill would become operative on July 1, 2008.

*The people of the State of California do enact as follows:*

SECTION 1. Section 10089.5 of the Insurance Code is amended to read:  
10089.5. As used in this chapter:

(a) "Authority" means the California Earthquake Authority.

(b) "Available capital" means the sum of all moneys and invested assets actually held in the California Earthquake Authority Fund, less loss reserves and loss adjustment expense reserves under all of the authority's policies

of residential earthquake insurance, and less the unearned premium reserve. “Available capital” includes all interest or other income from the investment of money held in the California Earthquake Authority Fund. “Available capital” does not include unearned premium, the proceeds of contracts of reinsurance procured by or in the name of the authority pursuant to subdivision (a) of Section 10089.10, any funds realized on capital market contracts authorized by subdivision (b) of Section 10089.10, or the proceeds of bonds issued by or in the name of the authority.

(c) “Basic residential earthquake insurance” means that policy of residential earthquake insurance described in Section 10089 except as follows:

(1) (A) If one year after the authority commences operation the authority has available capital equal to or exceeding seven hundred million dollars (\$700,000,000), any policy issued or renewed on or after that date shall provide, less any applicable deductible, not less than two thousand five hundred dollars (\$2,500) in coverage for additional living expenses.

(B) If the authority met the available capital requirements of subparagraph (A) and two years after the authority commences operation the authority has available capital equal to or exceeding seven hundred million dollars (\$700,000,000), any policy issued or renewed on or after that date shall provide, less any applicable deductible, not less than three thousand dollars (\$3,000) in coverage for additional living expenses.

(2) (A) If the authority did not meet the available capital requirement of subparagraph (A) of paragraph (1) but, two years after the authority commences operation the authority has available capital equal to or exceeding seven hundred million dollars (\$700,000,000), any policy issued or renewed on or after that date shall provide, less any applicable deductible, not less than two thousand five hundred dollars (\$2,500) in coverage for additional living expenses.

(B) If the authority met the available capital requirements as provided by subparagraph (A) and three years after the authority commences operation the authority has available capital equal to or exceeding seven hundred million dollars (\$700,000,000), any policy issued or renewed on or after that date shall provide, less any applicable deductible, not less than three thousand dollars (\$3,000) in coverage for additional living expenses.

(d) “Board” means the governing board of the authority.

(e) “Bonds” means bonds, notes, commercial paper, variable rate and variable maturity securities, and any other evidence of indebtedness.

(f) “Capital market contract” means an agreement between the authority and a purchaser pursuant to which the purchaser agrees to purchase bonds of the authority.

(g) “Nonparticipating insurer” means an insurer that elects not to transfer or place any residential earthquake policies in the authority.

(h) “Panel” means the advisory panel of the authority.

(i) “Participating insurer” means an insurer that has elected to join the authority.

(j) “Policy of residential property insurance” means those policies described in Section 10087.

(k) “Private capital market” means one or more purchasers of bonds of the authority pursuant to a capital market contract.

(l) “Qualifying residential property” includes all those residential dwellings set forth in Section 10087.

(m) “Residential earthquake insurance market share” means an individual insurer’s total direct premium received for (1) residential earthquake policies and endorsements written or renewed by the insurer in California and (2) residential earthquake policies written or renewed by the authority for which the insurer has written or renewed an underlying policy of residential property insurance, divided by the total gross premiums received by all admitted insurers and the authority for their basic residential earthquake insurance in California.

(n) “Residential property insurance market share” means an individual insurer’s total gross premiums received for residential property insurance policies written or renewed by the insurer, divided by the total gross premiums received by all admitted insurers for residential property insurance in California.

(o) “Revenue” means all income and receipts of the authority, including, but not limited to, income and receipts derived from premiums, bond purchase agreements, capital contributions by insurers, assessments levied on insurers, surcharges applied to authority earthquake policyholders, and all interest or other income from investment of money in any fund or account of the authority established for the payment of principal or interest, or premiums on bonds, including reserve funds.

(p) “Unearned premium reserve” means an amount equal to the unearned portion of premiums due to, or received by, the authority on all of its policies of residential earthquake insurance, without deduction on account of reinsurance ceded. The unearned premium reserve shall be charged as a reserve liability in determining the authority’s financial condition. Because the unearned premium reserve is established and maintained to protect the interests of authority policyholders in their unexpired authority policies, authority assets in an amount equal to the unearned premium reserve shall not be subject to encumbrance by, or distribution to, creditors of or claimants against the authority unless and until the authority has paid in full all policyholder claims and policyholder liabilities.

SEC. 2. Section 10089.9 of the Insurance Code is amended to read:

10089.9. (a) Upon commencement of participation in the authority, each participating insurer shall be required to execute a contract with the commissioner and the authority that sets forth its rights and responsibilities as an authority participant. The form of contract shall be part of the authority’s plan of operations and shall be uniform for every participating insurer.

(b) The uniform authority participation contract required by subdivision (a) may be modified by the full execution of a writing, in a form drawn in accordance with this act, that embodies the mutual intent and understandings

of the commissioner, the authority, and each participating insurer that has executed the authority participation contract.

(c) In the event a nonparticipating insurer elects to become a participating insurer of the authority, the authority is authorized to present to the nonparticipating insurer the most recent form of the amended uniform authority participation contract it has executed or proposed to execute with existing participating insurers and require its execution as a condition of authority participation. The acceptance by the authority of, and reliance by the authority on, the executed amended authority participation contract that is authorized by this subdivision shall not be deemed a lack of the uniformity of contract required by subdivision (a).

SEC. 3. Section 10089.13 of the Insurance Code is amended to read:

10089.13. (a) One year following its commencement of operations, and annually thereafter by each May 1, the authority shall report to the Legislature and the commissioner on program operations in a format prescribed by the commissioner. The report shall include, but shall not be limited to, the financial condition of the authority, a description of all rates and rating plans approved for use in the authority, an evaluation of the functioning of the authority in light of its stated purpose of making residential property insurance and residential earthquake insurance more available. The report shall also include an analysis of the growth by market share of residential property insurance of participating insurers compared to nonparticipating insurers, any adverse consequences on the various insurance distribution systems resulting from the operation of the authority or alterations in the growth of the residential property insurance market share between participating insurers and nonparticipating insurers, any adverse consequences of the various insurance distribution systems resulting from the operation of the authority or alterations in the growth of homeowners' insurance market share between participating insurers and nonparticipating insurers, and an analysis of any recommended program changes to permit the authority to better fulfill its stated purpose. In making this determination the board shall be mindful of the competitive nature of the market and how any decision can negatively impact insurers who are currently competing in the marketplace.

(b) The annual report shall include full information describing the following matters relating to the authority's condition and affairs:

(1) The property or assets held by the authority, including the amount of cash on hand and deposited in banks to its credit, the amount of cash in the hands of servicing insurance companies, the amount of any stocks or bonds owned by the authority, specifying the amount, number of shares, and the par and market value of each kind of stock or bond, and all other assets, specifying each.

(2) The liabilities of the authority, including the amount of losses due and unpaid, the amount of claims for losses resisted by the authority and the amount of losses in the process of adjustment or in suspense, including all reported and supposed losses, the amount of revenue bonds or other debt

financing issues under Section 10089.29 or Section 10089.50, and all other liabilities.

(3) Income of the authority during the preceding year, specifying premiums received, interest money received, and income from all other sources, specifying the source.

(4) Expenditures of the authority during the preceding year, specifying the amount of losses paid, the amount of expenses paid by category, and the amount of all other payments and expenditures.

(5) The costs and scope of all reinsurance and capital market contracts entered into by the authority under Section 10089.10.

(c) As part of the annual report, the authority shall make a separate, summary report on the financial capacity of the authority to pay claims made against the authority. Copies of this report shall also be made available to the public. The report shall include, but shall not be limited to, the following information, valued as of 30 days prior to the date of the report:

(1) The available capital of the authority.

(2) The liabilities of the authority.

(3) The amount of all assessments previously made and the amount of assessments that may be made in the future under Section 10089.23.

(4) The amount of the reinsurance under contract and actually available to the authority.

(5) The amount of all revenue bonds or other debt financing previously issued or contracted for and the amount of all revenue bonds or other debt financing that may be issued or contracted for in the future under Section 10089.29.

(6) The amount of surcharges previously assessed against policyholders and the amount of surcharges that are currently outstanding against policyholders under Section 10089.29.

(7) The amount of capital committed and actually available by contract from private capital markets that is available to pay claims against the authority.

(8) The amount of all assessments previously made and the amount of all assessments that may be made in the future under Section 10089.30.

(9) The amount of all assessments previously made and the amount of all assessments that may be made in the future under Section 10089.31.

(d) In verification of the matters set forth in the annual report provided for in subdivision (a), the Department of Finance shall approve independent qualified auditors selected by the commissioner to examine the books and accounts relating to all matters concerning the financial and program operations of the authority. The commissioner shall file a certified report of the examination with the President pro Tempore of the Senate, the Speaker of the Assembly, the Chairpersons of the Senate and Assembly Insurance Committees, and the Chairperson of the Senate Committee on Judiciary within 10 days of its receipt. Copies of this report shall also be made available to the public. The expense of examining the books and accounts of the authority shall be paid out of the operating funds of the authority.

(e) The authority shall, within 120 days following a seismic event that results in the payment of claims by the authority, and within one year of a major seismic event that results in the payment of claims by the authority, submit to the President pro Tempore of the Senate, the Speaker of the Assembly, the Chairpersons of the Senate and Assembly Insurance Committees, and the Chairperson of the Senate Committee on Judiciary, and the commissioner a concise written report of program operations related to that seismic event. The reports shall include, but not be limited to, progress on payment of claims, claims payments made and anticipated, and the functioning of the authority in response to the seismic event. Copies of this report shall also be made available to the public.

SEC. 4. Section 10089.16 of the Insurance Code is amended to read:

10089.16. (a) On application to the board, payment of any assessments and fees calculated by the board, and fulfillment of any additional requirements imposed by the board, nonparticipating insurers may become participants in the authority with all rights and privileges attendant to that participation.

(b) In order to act upon any findings and recommendations reported to the Legislature pursuant to Section 10089.13, or to implement a specific finding by the commissioner or the board that modification of requirements for entry into the authority is necessary to broaden the availability of residential property or residential earthquake insurance, the board is authorized to open the authority to participation by insurers who have not elected to participate in compliance with Section 10089.15. In implementing the authority granted by this section, the board may:

(1) Offer incentives for insurers to participate in the authority.

(2) Allow any insurer or insurer group that has not elected to become a participating insurer to become an associate participating insurer without complying with the capital contribution requirements of Section 10089.15 if it has maintained or exceeded its number of policies of residential property insurance written as of January 1, 1996.

(c) Any action by the board pursuant to subdivision (b) shall be subject to the following conditions and limitations:

(1) Any deliberation and action by the board shall be conducted at a public meeting of the board.

(2) No action may be taken within one year of the date upon which the authority begins writing policies of basic residential earthquake insurance.

(3) The board shall have no authority to modify the requirements of Section 10089.23, 10089.30, or 10089.31, or to provide, in any other manner, for reduction of the liability of an insurer or insurer group to comply with the assessments placed upon participating insurers in the event of a loss.

(4) Notwithstanding Section 10089.11, any action of the board pursuant to subdivision (b) shall be by regulation promulgated by the board. Notwithstanding any other provision of law, there shall be no authority by the board to promulgate emergency regulations to implement subdivision (b). No regulations may be proposed within one year of the date upon which the authority begins writing policies of basic residential earthquake

insurance. Notwithstanding any exception provided in Section 11343 of the Government Code, any regulation adopted pursuant to subdivision (b) shall be submitted to the Office of Administrative Law for approval pursuant to the Administrative Procedure Act.

(5) Any action by the board to establish an incentive pursuant to subdivision (b) that is available to a single insurer or insurer group shall be based upon standards adopted by the board that are not arbitrary or discriminatory. Notwithstanding Section 10089.11, these standards shall be established by regulation promulgated by the board.

(6) A finding of necessity pursuant to subdivision (b) shall state the specific facts and conditions that establish the necessity and justify the actions to implement subdivision (b). All materials and documents prepared or used by the authority to determine the necessity to implement subdivision (b), other than proprietary materials and documents owned or licensed by third parties, shall be considered public documents, and copies of the public documents shall be made available to the public for inspection at no charge. Members of the public may purchase copies of these documents from the authority at actual cost.

(d) (1) A nonparticipating insurer that applies to the board to become an authority participant must submit to the authority, in connection with its application, earthquake insurance policy data sufficient for the authority to ascertain through computer modeling the current likelihood and magnitude of earthquake insurance losses that would be attributable to that insurer's book of earthquake insurance business during its first full year of authority participation. The authority's modeled representation of such insured earthquake losses shall be termed the "earthquake insurance risk profile" of that insurer.

(2) If in the board's sole judgment the earthquake insurance risk profile the nonparticipating insurer would bring to the authority would be more likely to produce losses for the authority, or would be likely to produce greater losses for the authority, than would a book of existing authority business of similar size, the board may require as a condition for approving the insurer's application that the insurer pay up to five annual risk capital surcharges into the authority in addition to any capital contribution required by Section 10089.15 and any assessment obligations required by Sections 10089.23, 10089.30, and 10089.31.

(3) The board shall first calculate the nonparticipating insurer's risk capital surcharge as of the first anniversary of the date the insurer first placed or renewed into the authority earthquake insurance policies. The board shall recalculate the risk capital surcharge for each of up to four years after the first year of calculation and shall impose the resulting surcharge; if the insurer's earthquake insurance risk profile becomes substantially similar to the authority's average risk profile for a book of authority earthquake insurance business of similar size, the board shall relieve the insurer of any further obligation to pay risk capital surcharges.

(4) Each annual risk capital surcharge shall be in an amount that, in the board's determination, is equal to the authority's increased cost of providing

capacity to insure that insurer's excess earthquake insurance risk. The authority shall cause to be sent to each such insurer a notice of that insurer's annual risk capital surcharge.

(5) Full payment of a noticed risk capital surcharge shall be due within 30 days and shall be overdue after 30 days. Penalties and interest shall be assessed for late payments in the same manner as provided for late payments of the insurer gross premium tax provided for in Section 12258 of the Revenue and Taxation Code. The board may waive the penalties and interest for good cause shown.

(e) Associate participating insurers shall place all new policies of residential earthquake insurance, when writing new policies of residential property insurance, into the authority. Insurers placing policies with the authority under this section shall be subject to the assessments provided for in Sections 10089.23, 10089.30, and 10089.31. Notwithstanding subdivision (m) of Section 10089.5, "residential earthquake insurance market share" for purposes of any assessments pursuant to Sections 10089.23, 10089.30, and 10089.31 levied on an associate participating insurer shall mean an individual associate participating insurer's total direct premium received for residential earthquake policies written or renewed by the authority for which the insurer has written or renewed an underlying policy of residential property insurance, divided by the total gross premiums received by all admitted insurers and the authority for their basic residential earthquake insurance in California.

(f) (1) An associate participating insurer shall not cancel or refuse to renew a residential property insurance policy existing on the date it elected to become an associate participating insurer after an offer of earthquake coverage is accepted solely because the insured has accepted that offer of earthquake coverage.

(2) An associate participating insurer shall maintain in force any policy of residential property insurance existing on the date it elected to become an associate participating insurer after an offer of earthquake insurance has been accepted, unless the policy is properly canceled pursuant to Section 676 or the associate participating insurer has grounds for nonrenewal pursuant to subdivision (g).

(g) An associate participating insurer may refuse to renew a policy of residential property insurance after an offer of earthquake coverage has been accepted if one of the following exceptions applies:

(1) The policy is terminated by the named insured.

(2) The policy is refused renewal on the basis of sound underwriting principles that relate to the coverages provided by the underlying policy of residential property insurance and that are consistent with the approved rating plan and related documents filed with the department as required by existing law.

(3) The commissioner finds that the exposure to potential losses will threaten the solvency of the associate participating insurer or place the associate participating insurer in a hazardous condition. "Hazardous condition" has the same meaning as in Section 1065.1 and includes, but is



not limited to, a condition in which an associate participating insurer makes claims payments for losses resulting from an earthquake that occurred within the preceding two years and that required a reduction in policyholder surplus of at least 25 percent for payment of those claims.

(4) There is cancellation under Section 676.

(5) The associate participating insurer has lost or experienced a substantial reduction in the availability or scope of reinsurance coverage or a substantial increase in the premium charged for reinsurance coverage for its residential property insurance policies, and the commissioner has approved a plan for the nonrenewals that is fair and equitable, and that is responsive to the changes in the associate participating insurer's reinsurance position.

(6) The named insured is insured based upon membership in a motor club, as defined in Section 12142, and the membership in that organization is terminated as provided in paragraph (2) of subdivision (c) of Section 1861.03.

(h) For associate participating insurers, underwriting standards applicable to residential property insurance shall not be applied in an unfairly discriminatory fashion against any person who accepts or elects to continue earthquake coverage.

(i) Associate participating insurers shall be subject to the following requirements:

(1) Associate participating insurers shall conform to all provisions of the authority's plan of operation applicable to participating insurers.

(2) No property that has previously been covered by a policy of residential earthquake insurance written by the associate participating insurer or associate participating insurer group, absent at least one full policy year with an insurer not affiliated with the associate participating insurer or its group, may be placed into the authority by an associate participating insurer.

(3) Any associate participating insurer or associate participating insurer group defined in paragraph (2) of subdivision (b) that has failed to maintain or exceed the number of policies of residential property insurance in force on January 1, 1996, may become an associate participating insurer by contributing additional capital into the authority at a rate to be established by the board, which shall be a per policy rate comparable to the average cost per policy paid by a participating insurer that joins the authority pursuant to Section 10089.15.

(j) Any associate participating insurer shall be required to establish procedures to verify compliance with this section. The procedures shall require verification that each basic residential earthquake policy written by the authority complies with paragraph (2) of subdivision (i).

(k) Any violation of this section may be enforced as a violation of the Unfair Trade Practices Act (Article 6.5 (commencing with Section 790) of Chapter 1 of Part 2 of Division 1). Each policy of basic residential earthquake insurance written in the authority by an associate participating insurer in violation of this section shall be deemed to be a separate violation of the Unfair Trade Practices Act.

(l) For purposes of this section, no insurer or associate participating insurer may participate in the authority unless all affiliated insurers participate in the authority.

(m) Policies of basic residential earthquake insurance written by associate participating insurers shall be subject to assessment by the California Insurance Guarantee Association and shall be covered to the extent provided in Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1. Except as provided in Section 10089.34, insurance policies written by participating insurers that are not associate participating insurers shall not be subject to assessment by the California Insurance Guarantee Association if the assessment is imposed to pay claims covered by policies of basic residential earthquake insurance written by an associate participating insurer.

SEC. 5. Section 10089.23 of the Insurance Code is amended to read:

10089.23. (a) (1) If at any time following the payment of earthquake claims and claim expenses the authority's available capital is reduced to less than three hundred fifty million dollars (\$350,000,000), or if at any time the authority's available capital is insufficient to pay benefits and continue operations, the authority shall have the power to assess participating insurance companies subject to the maximum limits as set forth in this section and Section 10089.30. The assessment shall be limited to the amount necessary to pay the outstanding or expected claims and claim expenses of the authority and to return the authority's available capital to three hundred fifty million dollars (\$350,000,000), as determined by the board, subject to approval by the commissioner.

(2) Each participating insurer's assessment shall be determined by multiplying the percentage share of the authority's total gross written premium that is attributable to that participating insurer's sales of authority insurance policies, as of April 30 of the immediately preceding year or the most recent year for which premium data not more than one year old are available, by the amount of the total assessment sought by the authority.

(3) The maximum permissible insurer assessments pursuant to this section, the maximum permissible insurer assessments pursuant to Section 10089.30 and Section 10089.31, the maximum permissible earthquake policyholder assessments pursuant to Section 10089.29, and the maximum permissible bond issuances or other debt financing issued or secured by the Treasurer pursuant to Section 10089.29 shall be reduced uniformly by multiplication of the maximum assessments and other amounts provided in those sections by the percentage of the total residential property insurance market share participation attained by the authority. The total amount of all assessments levied on participating insurance companies by the authority pursuant to this section shall not exceed three billion dollars (\$3,000,000,000), regardless of the frequency or severity of earthquake losses at any and all times subsequent to the creation of the authority. Once a participating insurer has paid, pursuant to this section, amounts equal to the percentage share of the authority's total gross written premium attributable to that participating insurer's sales of authority insurance

policies, as of April 30 of the immediately preceding year or the most recent full year for which premium data not more than one year old are available, multiplied by three billion dollars (\$3,000,000,000) reduced as provided in this paragraph from the maximum assessment, the authority's power to assess that insurer under this section shall cease and the authority shall be prohibited from levying additional assessments on that insurer pursuant to this section.

(4) Beginning December 31 of the first year of operations, and each December 31 thereafter, the board shall adjust the maximum permissible insurer assessments pursuant to this section, the maximum permissible insurer assessments pursuant to Sections 10089.30 and 10089.31, the maximum permissible authority policyholder assessment pursuant to Section 10089.29, and the maximum permissible bond issuances or other debt financing issued or secured by the Treasurer pursuant to Section 10089.29 to reflect the market share of new insurers entering into the authority as authorized by Sections 10089.15 and 10089.16 and participating insurers withdrawing from the authority as authorized by Section 10089.19. The adjustments shall be made in the same manner as authorized by paragraph (3).

(b) In the case of any insurer assessment, the authority shall cause to be sent to each participating insurer a notice of that insurer's assessment, and full payment shall be due within 30 days and shall be overdue after 30 days. Penalties and interest shall be assessed for late payments in the same manner as provided for late payments of the insurer gross premium tax pursuant to Section 12258 of the Revenue and Taxation Code. The board may waive the penalties and interest for good cause shown. The board shall make every effort to assess insurers only for funds reasonably anticipated to be necessary for claims payments and claim expenses and to return the authority's available capital to three hundred fifty million dollars (\$350,000,000).

(c) Notwithstanding the other provisions of this section, the aggregate assessment the authority is authorized by this section to impose shall be reduced to zero on December 1, 2008, with respect to earthquake events that commence on or after December 1, 2008.

(d) The authority shall not assess a participating insurer under this section based on any insurance business that is attributable to the insurer selling the insurer's insurance products that supplement or augment the basic residential earthquake insurance provided by the authority.

SEC. 6. Section 10089.30 of the Insurance Code is amended to read:

10089.30. If claims and claim expenses paid by the authority due to earthquake events exhaust the total of (a) the authority's available capital, (b) the maximum amount of all insurer capital contributions and assessments pursuant to Sections 10089.15 and 10089.23, (c) all reinsurance actually available and under contract to the authority, (d) the maximum amount of all authority policyholder assessments pursuant to Section 10089.29, and (e) all capital committed and actually available from the private capital markets, the board, subject to the approval of the commissioner, shall have the power to assess participating insurance companies subject to the

maximum limits in this section. Each participating insurer's assessment shall be determined by multiplying the percentage share of the authority's total gross written premium attributable to that participating insurer's sales of authority insurance policies, as of April 30 of the immediately preceding year or the most recent year for which premium data not more than one year old are available, by the amount of the total assessment sought by the authority. The total amount of all assessments levied against participating insurance companies by the authority pursuant to this section shall not exceed two billion dollars (\$2,000,000,000), regardless of the frequency or severity of earthquake losses at any and all times subsequent to the creation of the authority. Once a participating insurer has paid, pursuant to this section, amounts equal to its percentage share of the authority's total gross written premium, multiplied by two billion dollars (\$2,000,000,000) reduced from the maximum assessment as provided in paragraph (3) of subdivision (a) of Section 10089.23, the authority's power to assess that insurer under this section shall cease and the authority shall be prohibited from levying additional assessments on that insurer pursuant to this section. The assessment shall be limited to the amount necessary to pay the expected claims and claim expenses of the authority and return the authority's available capital to three hundred fifty million dollars (\$350,000,000), as determined by the board, subject to approval by the commissioner.

SEC. 7. Section 10089.31 is added to the Insurance Code, to read:

10089.31. If claims and claim expenses paid by the authority due to earthquake events that commence on or after December 1, 2008, exhaust the total of all (a) the authority's available capital, (b) the maximum amount of all insurer capital contributions and assessments pursuant to Sections 10089.15, 10089.23, and 10089.30, (c) all reinsurance actually available and under contract to the authority, (d) the maximum amount of all authority policyholder assessments pursuant to Section 10089.29, and (e) all capital committed and actually available from the private capital markets, the board, beginning December 1, 2008, for earthquake events commencing on or after December 1, 2008, shall have the power to assess participating insurance companies subject to the maximum limits in this section. Each participating insurer's assessment shall be determined by multiplying the percentage share of the authority's total gross written premium attributable to that participating insurer's sales of authority insurance policies as of April 30 of the immediately preceding year, or the most recent year for which premium data not more than one year old are available, by the amount of the total assessment sought by the authority. The total amount of all assessments levied against participating insurance companies by the authority pursuant to this section shall not exceed one billion seven hundred eighty million dollars (\$1,780,000,000), regardless of the frequency or severity of earthquake losses at any and all times subsequent to the creation of the authority. Once a participating insurer has paid pursuant to this section amounts equal to its percentage share of the authority's total gross written premium, multiplied by one billion seven hundred eighty million dollars (\$1,780,000,000) reduced as provided in paragraph (3) of subdivision (a)

of Section 10089.23 from the maximum assessment, which is to be reduced periodically pursuant to subdivision (b) of Section 10089.33, or upon the earlier occurrence of the effective date stated in paragraph (6) of subdivision (b) of Section 10089.33, the authority's power to assess that insurer under this section shall cease and the authority shall be prohibited from levying additional assessments on that insurer pursuant to this section. The assessment shall be limited to the amount necessary to pay the expected claims and claim expenses of the authority and return the authority's available capital to three hundred fifty million dollars (\$350,000,000), as determined by the board.

SEC. 8. Section 10089.33 of the Insurance Code is amended to read:

10089.33. (a) If the average daily balance of the authority's available capital exceeds six billion dollars (\$6,000,000,000) for the last 180 days of any calendar year, the board shall relieve all participating insurers of their obligation to pay additional earthquake loss assessments under Section 10089.30, by an aggregate amount equal to the amount of available capital in excess of six billion dollars (\$6,000,000,000). Each December 31 thereafter, the board shall further reduce the aggregate assessment authorized under Section 10089.30 by the net increase in available capital in excess of the previous levels of available capital at which a reduction in the aggregate Section 10089.30 assessment was made. No reduction pursuant to this subdivision shall exceed 15 percent of the original aggregate Section 10089.30 assessment in any year of operation of the authority.

(b) Commencing April 1, 2010, and on each April 1 thereafter, but only in years that such relief is authorized by this subdivision, the board shall reduce the combined assessment obligation of all participating insurers under Section 10089.31 by 5 percent of the maximum aggregate Section 10089.31 assessment authorized as of January 1, 2009, as provided in this subdivision. Each year of Section 10089.31 assessment reduction is referred to in this subdivision as an "assessment-reduction year." Assessment reductions shall take place as follows:

(1) Unless the authority has made payments and established appropriate reserves for claims and claim expenses, including for losses incurred but not reported, that in the aggregate exceeded five hundred million dollars (\$500,000,000) on account of a single earthquake event commencing in 2009, as certified by the authority's consulting actuary and accepted by the board, and the authority's available capital as of January 1, 2010, did not exceed the authority's available capital as of December 1, 2008, then effective April 1, 2010, the maximum aggregate Section 10089.31 assessment shall be reduced by an amount equal to the sum of an amount equal to 5 percent of the initial maximum aggregate Section 10089.31 assessment amount and an amount equal to the retained earnings differential, and 2009 shall be an assessment-reduction year.

(2) Unless the authority has made payments and established appropriate reserves for claims and claim expenses, including for losses incurred but not reported, that in the aggregate exceeded five hundred million dollars (\$500,000,000) on account of a single earthquake event commencing in

2010, as certified by the authority's consulting actuary and accepted by the board and the authority's available capital as of January 1, 2011, did not exceed the authority's available capital as of December 1, 2008, then effective April 1, 2011, the maximum aggregate Section 10089.31 assessment shall be reduced by an amount equal to the sum of an amount equal to 5 percent of the initial maximum aggregate Section 10089.31 assessment amount and an amount equal to the retained earnings differential, and 2010 shall be an assessment-reduction year.

(3) Beginning in 2012 and each year thereafter, unless the authority made payments and established appropriate reserves for claims and claim expenses, including for losses incurred but not reported, that in the aggregate exceeded five hundred million dollars (\$500,000,000) on account of all earthquake events commencing in the preceding year, as certified by the authority's consulting actuary and accepted by the board and the authority's available capital as of January 1 of that year did not exceed the authority's available capital as of December 1, 2008, then effective April 1 of that year, the maximum aggregate Section 10089.31 assessment shall be reduced by an amount equal to the sum of an amount equal to 5 percent of the initial maximum aggregate Section 10089.31 assessment amount and an amount equal to the retained earnings differential, and the preceding year shall be an assessment-reduction year.

(4) If through operation of this subdivision a year is not deemed an assessment-reduction year, no subsequent year shall be an assessment reduction year unless and until either the authority's available capital as of a subsequent April 1 exceeds the authority's available capital as of December 1, 2008; or the limitation established in paragraph (5), below, occurs.

(5) No more than two annual periods may be deemed not to constitute assessment-reduction years.

(6) Effective on the day after the last day of the 10th assessment-reduction year authorized by the board, the remaining maximum aggregate Section 10089.31 assessment shall be reduced to zero.

(7) As used in this section, "retained earnings differential" means the positive dollar-amount difference between: (A) the authority's positive one-year retained-earnings growth for the preceding calendar year, minus (B) the authority's capacity growth for the preceding calendar year, both calculated as of December 31. As used in this paragraph, "one-year retained-earnings growth" means the difference between the authority's cumulative retained earnings at December 31 of the preceding calendar year and the authority's cumulative retained earnings at December 31 of the year before the preceding calendar year, calculated in accordance with generally accepted accounting principles as of the preceding December 31. As used in this paragraph, the term "capacity growth" is the one-year amount of purchased risk transfer, such as reinsurance, or borrowed risk transfer such as bonds, put in place in the authority's financial structure to account for the authority's aggregate exposure growth over the preceding year ending December 31. The board shall be authorized and entitled, in its sole discretion, to make all final decisions regarding the authority's level of

financial strength and security and the authority's choice and use of financing and risk-transfer mechanisms. As used in this paragraph, the term "aggregate exposure" means the aggregate of the limits of liability under all coverages of all earthquake insurance policies issued by the authority.

(c) In no event shall the board reinstate, in whole or in part, any assessment obligation it has reduced pursuant to this section.

SEC. 8. The provisions of this act shall become operative on July 1, 2008.

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